

OGC 82-11437

28 December 1982

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MEMORANDUM FOR: Director of Logistics

FROM:

[REDACTED]
Associate General Counsel

SUBJECT: Defective Water Chiller Pump - Project SAFE

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1. Today I spoke to [REDACTED] regarding the matter of the damaged tape drives. I told Tony that we have not received any of the procurement documentation concerning the acquisition and installation of the pump. This material will be most helpful in determining what, if any, remedies we have against the pump manufacturer and/or the installer. Tony indicated that he would tweak [REDACTED] to provide us these materials. In the meantime, I have asked Mike to get with the contracting officer from Procurement Division since I have just learned the pump was purchased by the Agency and given to General Services Administration for installation by the resident workforce.

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2. The problem basically is twofold. One, assuming the pump to have been accepted by the Government, our remedies are limited to those found in any warranty which may or may not exist, and second, those arising from a latent defect if such can be proved. Latent defects are extremely difficult to prove given the fact that they are largely limited to manufacturing deficiencies that are not discernible under inspection criteria. Moreover, even if we do establish latent defect, the typical remedy is merely replacement of the item which is defective. Expanding remedies to include consequential damages, i.e., cost of repair or replacement of the damaged tape drives, is probably limited by express terms of contract for sale of the pump itself. I would be most surprised if the vendor left himself that vulnerable, but, of course, it is always possible.

3. In any event, we will await Tony's and Chuck's input and that of the contracting officer. I assure you that we will provide an opinion as soon as possible after receipt of the necessary information. Mike will be present along with Procurement Division and Office of Data Processing representatives when the insurance adjuster for [REDACTED] examines the circumstances at the equipment site at 11 a.m. on Wednesday, 29 December 1982.

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